COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric for Approval by the Department of Telecommunications and Energy of Proposed Revised Tariffs Relating to the Companies' Terms and Conditions for Distribution Services and Competitive Suppliers, Respectively	)	D.T.E. 05-84

MOTION OF RETAIL ENERGY SUPPLY ASSOCIATION FOR RECONSIDERATION AND CLARIFICATION OF FINAL ORDER

Introduction

Following a compressed seven week schedule seeking to produce a decision before the start of the next wholesale procurement cycle for large commercial and industrial ("C&I") customers, the Department of Telecommunications and Energy (the "Department") issued a January 12, 2006 final Order ("Order") in the above-captioned docket.[1] The Order grants the modified request of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR") to adopt new tariffs that will prohibit customers from interacting with the retail supplier of their choice.[2] Pursuant to 220 CMR 1.04(5) and 1.11(10), the Retail Energy Supply Association ("RESA")[3] moves for reconsideration of the Order in its entirety. In the alternative, RESA

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1 NSTAR, D.T.E. 05-84 (2006) ("Order").

2 Order at 17-19.

3 RESA member companies include Amerada Hess Corporation, Constellation NewEnergy, Inc., Direct

moves for partial reconsideration and clarification and urges the Department to stay its implementation until such time as the significant operational problems associated with the Order can be identified and resolved.

In its well-intentioned effort to implement a remedy within the timeframe urged by NSTAR, the Department failed to address evidence and argument by the majority of the participants in this proceeding that the new tariffs would harm customers and retail suppliers. Nor did the Department address serious concerns regarding the impact of the new prohibition on the Commonwealth's retail market – a regional and national success story that has saved Massachusetts' businesses and residents millions of dollars on their electric bills. In fact, the Analysis section of the Order is completely silent on those points.

RESA, the Division of Energy Resources ("DOER"), Cape Light Compact ("Compact"), Direct Energy Services, LLC ("Direct") and TransCanada Marketing Ltd. ("TransCanada") also argued that the tariffs were not needed because there was no evidence that customer switching was the principal cause of rising wholesale prices.[4] Indeed, Direct urged the Department to defer action until after the next default service procurement cycle to determine whether, as a factual matter, the increase in wholesale prices was attributable to transient events.[5] The Department failed to address these arguments as well. Instead, it chose to accept, without question or evidence, NSTAR's dual assertion that (1) customer

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Energy Services, LLC, Reliant Energy Solutions, Select Energy, Inc., Sempra Energy Solutions, Strategic Energy LLC, Suez Energy Resources NA, Inc. and U.S. Energy Savings Corp. The opinions expressed in this filing may not represent the views of all members of RESA.

4 Initial Comments of RESA at 8-11; Comments of DOER at 3-4; Comments of Compact at 2; Comments of Direct at 3; Reply Comments of TransCanada at 2.

5 Reply Comments of Direct at 3-4.

switching is problematic, and (2) an immediate solution is needed in order to insulate large default service customers from price increases.[6]

The Department should grant RESA's motion for reconsideration and reverse the Order in its entirety. In the alternative, RESA asks the Department to reconsider its language encouraging NSTAR to assume a role more properly suited for the Department – that is, to monitor customer and retail supplier compliance with the new tariffs. Empowering NSTAR with that authority is unwise, potentially anticompetitive and will impose undue burden and delay on customers and retail suppliers that will substantially harm the Commonwealth's robust retail electric markets. RESA also urges the Department to clarify the Order to expressly identify additional exceptions to the six-month rule precluding a return to the same supplier beyond expiration of the supply contract. Furthermore, in the event the Department does not reverse the Order in its entirety, the Department should stay implementation and immediately schedule technical sessions to identify and resolve the operational problems posed by the Order as described herein.

Finally, irrespective of whether the Department grants RESA's motion for reconsideration and/or clarification and affords the relief it requests, the Department should open a docket that will have as its goal the adoption of hourly pricing for large default service customers to be implemented by January 1, 2007.

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[6] Order at 16. RESA's concerns that NSTAR's tariff changes are not needed to ensure success of its wholesale procurement process are confirmed by a recent article in Restructuring Today, reporting that "Unitil's large business customers in Massachusetts will pay about one-third less for basic service beginning March 1." Unitil rates following market down, Restructuring Today, Jan. 27, 2006. Unitil evidently did not need a prohibition on customer choice to keep its wholesale prices in check. Nor does NSTAR.

Reconsideration and Clarification Standards

The Department's well-settled standards provide that reconsideration of a previously-issued order is granted "only when extraordinary circumstances dictate that [the Department] take a fresh look at the record for the express purpose of modifying a decision reached after review and deliberation."[7] Although a motion for reconsideration is not an opportunity to "reargue issues considered and decided in the main case," the Department has stated that such a motion may be granted when it either brings to light new facts "that would warrant a material change to a decision already rendered," or is based on argument that "the Department's treatment of an issue was the result of mistake or inadvertence."[8] A motion for clarification, by contrast, is appropriate "when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubts as to its meaning."[9]

Argument

I. THE DEPARTMENT SHOULD RECONSIDER AND REVERSE THE ORDER AND IMMEDIATELY OPEN AN HOURLY PRICING DOCKET

A. The Department Failed to Address Arguments that NSTAR's New Tariffs Will Harm Customers, Retail Suppliers and the Market

What is most striking about this proceeding is the overwhelming agreement among the majority of commenters that NSTAR's proposed six month prohibition on a customer's interaction with its regular supplier, following the customer being placed on default service, will have a serious adverse impact on customers, retail suppliers and the retail market at

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7 Fiber Technologies Networks, LLC, D.T.E. 01-70 at 7 (2004).

8 Id. at 7-8.

9 Id. at 8.

large.[10] Even DOER, which is charged with making energy policy recommendations for the Commonwealth, espoused that viewpoint.[11]

The Order, however, fails to conduct any analysis of this evidence and arguments in its granting of the NSTAR proposal in modified form. Specifically, the Analysis and Findings section of the Order (pp. 15-18) failed to address at all the assertions of many commenters that the prohibition would be injurious to customers in that it would: (1) impose a black out period that would render them unable to purchase products from their regular supplier that is uniquely familiar with their business needs; (2) potentially deprive them of access to the lowest cost supplier; (3) potentially discourage participation of these customers in the competitive market; and (4) eliminate the cardinal element of competitive retail markets – customer choice. Nor did the Department's Analysis consider the degree to which the anti-competitive prohibition will intrude on retail suppliers' mutually beneficial relationships with their customers. Perhaps most significantly, the Order did not evaluate how the inevitable result of the new rule – more customers on default service – will harm the retail market by dampening product innovation and rendering the Commonwealth a less attractive place for retail suppliers to sell their products, all to the detriment of Massachusetts' businesses that have benefited greatly from vibrant retail competition. Based

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[10] See Initial Comments of RESA at 12-13; Comments of Compact at 1-2; Comments of TransCanada at 3-5; Comments of The Energy Consortium at 1; Comments of Wal-Mart at 1; Reply Comments of RESA at 9-10; Reply Comments of Direct at 7; Reply Comments of TransCanada at 2.

[11] Comments of DOER at 6. See also G.L. c. 25A, § 6(2) (providing that DOER's duties include assisting other agencies in "developing appropriate programs and policies relating to energy planning and regulation in the commonwealth . . . ."

on all of these critical omissions that call into serious question the correctness of the decision to act favorably on NSTAR's Petition, the Department should reverse the Order.[12]

B. The Department Did Not Closely Examine the Evidence and Perform a Cost-Benefit Analysis

The Department's failure to consider the aforementioned arguments is exacerbated by its willingness to approve NSTAR's modified proposal without any reasoned analysis of whether the lack of customer restrictions is leading to significantly higher prices for the default service customers that have not yet migrated to competitive supply.[13] Review of the record and the Order leads to three inescapable conclusions.

First, while NSTAR offered data of the extent to which customers are switching on and off of default service,[14] it offered no support for the conclusion that such switching is having a significant impact on the willingness of wholesale suppliers to participate in default service procurements or that such diminished participation is having a significant impact on default service prices - and the Department failed to fill the void with its own independent analysis.

Second, the Order failed to address the evidence and argument offered by RESA and other parties pointing out that it was both speculative and unlikely that customer switching

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12 G.L. c. 30A, § 11(8) states that every agency decision "shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision . . . ." See also Massachusetts Institute of Technology v. Department. of Pub. Utils., 425 Mass. 586, 594 (1997) (stating that the Department's decision did not comply with that statutory mandate because it failed to set forth the subsidiary findings on each relevant issue of fact and did not explain why it accepted the electric distribution company's calculations and rejected challenges to those calculations by the Massachusetts Institute of Technology).

13 G.L. c. 30A, § 14(7) provides that an agency decision will not be upheld if it is "unsupported by substantial evidence" or is "arbitrary and capricious." In Boston Edison Co. v. Department of Pub. Utils, 417 Mass. 458 (1994), the court overturned a decision by the Department because it did not engage in a "reasoned decision" on whether the electric company's withdrawal or deferral of a proposed power plant was an extraordinary circumstance warranting electric company's request.

14 Pre-Filed Testimony of Daly at 7.

was a principal cause of higher default service prices in NSTAR's Fall 2005 procurement. Far more likely culprits include the combination of a (1) projected colder than normal winter heating season, (2) uncertainties regarding availability of gas and oil supplies due to damage from Hurricanes Katrina and Rita and associated price impacts, and (3) uncertainties regarding capacity charges that might apply on a going forward basis, based on the ISO New England's LICAP proposal or modified proposals.[15] Rather than examine any of this evidence, the Order rested on the conclusory assertion that customer switching has the "potential" to harm large C&I customers who rely on default service as a service of last resort.[16] This does not constitute reasoned agency decision making that is sufficient to maintain the Order in its present form.

Finally, the Order also makes no effort to balance the putative benefits to default service customers that are hoped to emerge from NSTAR's proposal against the potential harms to competitive customers and the Commonwealth's retail market at large. While Staff acknowledged during hearings that the vibrant competitive market in Massachusetts is a great success story, especially in the large industrial customer segment, the Order does not address the extent to which this success story may be placed in jeopardy by the proposed restriction on customer choice. The Department should reconsider the Order and engage in this balancing of interests now, before the robust retail electric markets that the Department and stakeholders have worked so hard to establish are substantially and irreparably harmed.

The Department's failure to address crucial arguments, engage in a probing analysis of the evidence and weigh the costs and benefits of the new prohibition is no doubt

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15 RESA Initial Comments at 8-9; DOER Comments at 3-4; Reply Comments of RESA at 8-9; Reply Comments of Direct at 4; Reply Comments of TransCanada at 2.

16 Order at 16.

attributable, to its desire to meet the accelerated deadlines urged by NSTAR. The Department's cursory analysis in this proceeding stands in stark contrast to its detailed orders over a several year period that established the current hugely successful, market rules in the first place.[17]

C. The Department Should Immediately Open an Hourly Pricing Docket

RESA further urges the Department to immediately open a docket that will have as its goal the adoption of hourly pricing for large default service customers so that a new default pricing regime can be implemented by January 1, 2007 or as soon thereafter as practicable.[18] Most parties to this docket and the Order itself appeared to agree that hourly pricing models similar to those adopted in the District of Columbia, Maryland, New Jersey and other states will eliminate market pricing distortions that may encourage customer switching.[19] They also appeared to agree that hourly pricing will have the salutary effects of furthering retail competition and fostering customer participation in demand response programs and other conservation measures. Finally, Department staff at the technical session correctly appeared to treat the NSTAR proposal as, at most, a short term measure that should be promptly replaced by a more permanent solution, such as hourly pricing.[20]

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17 See, e.g., Investigation of the [Department] on its own Motion into the Pricing and Procurement of Default Service, D.T.E. 99-60-B (2000) and D.T.E. 99-60-C (2000); Investigation by the [Department] on its own Motion into the Provision of Default Service, D.T.E. 02-40-A (2003), D.T.E. 02-40-B (2003) and D.T.E. 02-40-C (2003); Investigation by the [Department] on its Own Motion, pursuant to G.L. c. 164 §§ 1A(a), 1B(d), 94; and 220 C.M.R. § 11.04 into the Costs that Should be Included in Default Service Rates, D.T.E. 03-88 (2003) and related filings.

18 The Department could also review within that docket proposals to shorten the procurement cycles for medium and small customers on default service.

19 See Order at 16 (stating that "moving to hourly pricing for large C&I customers may resolve the issue . . . ."); see also Initial Comments of RESA at 14-17; Comments of DOER at 6-7; Comments of TransCanada at 6; Comments of Direct at 10-12.

20 Indeed, even the Order characterized NSTAR's proposal as a "shorter-term solution." Order at 17.

Thus, for all of the above reasons, even if the Department rejects RESA's motion for reconsideration or grants such motion and declines to reverse the Order in whole or in part, it nonetheless should open this hourly pricing investigation and begin implementation planning as soon as possible. In fact, the timely adoption of hourly pricing will be even more important if the Department issues an unfavorable ruling in response to this Motion. Prompt implementation of hourly pricing will minimize the adverse impacts to the market that will culminate from the imperfect short-term fix adopted in the Order.

II. THE DEPARTMENT SHOULD RECONSIDER AND CLARIFY CERTAIN ASPECTS OF THE ORDER PRIOR TO IMPLEMENTATION

A. The Department Should Reconsider its Decision to Enable NSTAR to Act as Compliance Monitor

The Order assumes that NSTAR will play a significant, though ill-defined role, in monitoring compliance with the new tariffs and informing the Department if it suspects that a particular retail supplier is continuing to engage in multiple switching practices.[21] RESA maintains that any encouragement in the Order of NSTAR acting as the compliance monitor is, at best, unwise and, at worst, potentially anticompetitive as this delegation is fundamentally incompatible with the Department's role as the entity charged with licensing and monitoring retail suppliers[22] and with NSTAR's limited role as administrator of default service for such Massachusetts customers as elect that option.[23] This monitoring function properly rests with the Department. The Department should either presume that retail

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21 Order at 17-18.

22 See G.L. c. 164, § 1F (stating that Department is responsible for licensing competitive suppliers and establishing the rules and regulations to which they must comply). See also 220 C.M.R. 11.05 (licensing of competitive suppliers); 220 C.M.R. 11.07 (investigating complaints against competitive suppliers).

23 RESA also objected to the revised tariffs submitted by the NSTAR Companies on January 20, 2006 in a separate letter filed with the Department on January 31, 2006.

suppliers and customers will obey the law or conduct its own post-transaction reviews based on data provided by NSTAR and retail suppliers.

1. NSTAR's Has Demonstrated its Willingness to Disregard the Department's Orders

In NSTAR's November 21, 2005 proposal (the "initial proposal"), the prohibition against a customer's contact with its previous supplier applied in all instances in which a customer returned to default service from competitive supply.[24] NSTAR amended that initial proposal in its Reply Comments in order to carve out an exemption for a customer that switched to default service upon the expiration of its retail supply contract.[25] That exception is clearly warranted. However, the proposed tariff language allows NSTAR to insert itself as the middleman and ultimate arbiter of compliance with any new rules established in the Order, as set forth below:

> The Company shall reasonably accommodate a change from Standard Offer Service, Default Service or Generation Service to a new Competitive Supplier in accordance with the Terms and Conditions for Competitive Suppliers, and shall accommodate a change to Standard Offer Service or Default Service from Generation Service; provided, however, that when a Customer changes from a Competitive Supplier to Default Service, unless the Customer or the applicable Competitive Supplier can demonstrate to the Company's reasonable satisfaction that the Customer has been placed on Default Service upon the expiration of a contract with such Competitive Supplier, the Customer is not permitted to return to the same Competitive Supplier for a period of six (6) months from the effective date of the change. Customers are permitted to switch from Default Service to a different Competitive supplier who has not supplied the Customer with Generation Service in the same six (6) month period.[26]

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24 See Nov. 21, 2005 Tariff filings by the NSTAR Companies and Pre-Filed Testimony of James G. Daly at 9-10.

25 NSTAR Reply Comments at 16.

26 Id. (emphasis in original).

Although the Order endorsed the expired contract exception in theory, it rejected the tariff language proposed by NSTAR. To that end, the Department wrote:

> NSTAR Electric's proposed revised tariff language requires the competitive supplier or the customer to "demonstrate to the Company's reasonable satisfaction" that the customer has been placed on default service upon the expiration of a contract with such competitive supplier (NSTAR Electric Reply Comments at 16). The Department directs NSTAR to amend this proposed language to clarify that such demonstration will be upon the express and particular request from the Company and that customer enrollment transactions will occur consistent with the appropriate Massachusetts Electronic Business ("EBT") standards. The Department expects NSTAR will employ a procedure focused on particular cases, as needed, so as not to encumber all market transactions with unnecessary proofs or documentation. In the event of a dispute between the Company and a retail competitive supplier or a customer, the Department will determine whether NSTAR has acted appropriately.[27]

On January 20, 2006, NSTAR filed its revised tariffs. It did not, however, amend the tariff language as ordered by the Department. Rather, it filed the exact same language that appeared in its Reply Comments[28] and, in the accompanying cover letter, set forth the procedures by which it planned to administer the new tariffs:

> Consistent with the Department's directive, NSTAR Electric will implement its revised Terms and Conditions as follows. For those Basic Service customers that seek to enroll with a retail competitive supplier, the Companies' billing system will identify whether their past service with that particular supplier occurred during the previous six months. If past enrollment with that supplier is detected, the enrollment will be flagged and the enrolling supplier will be contacted via the EBT. The enrolling supplier will then have the opportunity to provide NSTAR Electric with sufficient documentation demonstrating that the customer's prior contract with the supplier had expired. Upon such

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27 Order at 17-18 n. 4 (emphasis added).

28 NSTAR Filing, Cover Letter, Jan. 20, 2006 n.1 (stating that tariff language is the same as that proposed in Reply Comments).

demonstration, the Companies will enroll the customer manually with the enrolling supplier.[29]

Contrary to NSTAR's assertion, its procedures are hardly consistent with the "Department's directive." In fact, they do precisely what the Department prohibited – "encumber all market transactions with unnecessary proofs and documentation" and generally insert NSTAR as the principal arbiter of what constitutes "reasonable" compliance with the requirements established in the Order. [30]

On January 31, 2006, the Department endorsed as approved NSTAR's January 20, 2006 tariffs as filed even though they violate the Order. As noted above, the Order envisions that NSTAR would process customer enrollment transactions in a manner "consistent with the appropriate EBT standards" and would review documentation only in "particular cases" and upon the "express and particular request of the Company." The Order does not, however, specify how NSTAR is supposed to select the "particular cases" on which it should focus, nor does the Order articulate the extent to which NSTAR is authorized to make inquiries to retail suppliers or customers to obtain information, and how many instances of noncompliance it uncovers that are sufficient to justify submission to the Department.

As discussed in the subsections below, the Department should avoid the near-certain disruption to competitive markets by (1) reconsidering its approval of NSTAR's unchanged tariff filing, (2) reconsidering the concept of involving NSTAR at all in compliance, and (3) at most instituting a reporting and compliance assurance approach that does not involve anything other than a ministerial role for NSTAR.

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29 Id. at 3 (emphasis added).

30 Order at 17-18 n. 4.

2. The Department Should Reconsider its Approval of NSTAR's Tariffs

NSTAR's tariffs and accompanying procedures do not presume that customers and retail suppliers obey the law. To the contrary, they require customers or retail suppliers to prove that each and every customer switch flagged by NSTAR's system conforms to the six-month prohibition or the exception thereto. That approach will create an extraordinary and unnecessary administrative burden on retail suppliers and customers. It also will halt every flagged transaction in its tracks and require customers to remain on default service while NSTAR investigates to its "reasonable satisfaction" transactions that, in all probability, comport with the law. NSTAR processes thousands of customer enrollments with competitive suppliers each year. Its procedures to monitor compliance with the new tariffs will create untenable delays for both customers and retail suppliers for no useful purpose.

3. The Department Should Assume Direct Responsibility for Monitoring Compliance with the New Tariffs

Although the Department may be inclined to simply direct NSTAR to revise its tariffs to conform to the Order, the Department erred at the outset by expressly encouraging NSTAR to serve any role in assuring compliance.

In assigning NSTAR this role, the Department appeared to anticipate that NSTAR would examine documentation to determine whether customers and retail suppliers are complying with the tariffs and further stated: "If the Company suspects that a retail supplier licensed by the Department is continuing to engage in the practice of multiple-switching during a contract term, it may report the supplier to the Department for investigation."[31] NSTAR's role should not be a traffic cop in ensuring the workings of competitive electricity markets in the Commonwealth; that job properly belongs to the Department. Empowering

[31] Order at 17-18.

NSTAR with the authority to intrude in some ill-defined manner on the supplier-customer relationship and threaten retail suppliers with complaints to the Department is unwise and entirely inconsistent with NSTAR's circumscribed role in delivering electricity and procuring sufficient default service supply to serve customers that do not choose to utilize competitive options. Rather, the Department should clarify or reconsider the Order to provide that NSTAR should not have a special role in determining compliance.

4. The Department Should Enforce Compliance, if Needed at all, Through Reporting Requirements and Post-Transaction Reviews

The Department could efficiently conduct post-transaction reviews to ascertain compliance with the new tariffs by using periodic reports provided by NSTAR and retail suppliers for that purpose. Under this process, the Department would obtain a monthly or quarterly report from NSTAR, taken from the EBT system and filed under protective order, that lists the names of all customers that have been on default service for less than six months and have returned to the last competitive supplier that served them, the name of that competitive supplier and pertinent dates and other data elements as appropriate. At the same time, each retail supplier could provide the Department with reports (also filed under protective order) that list the names of customers that have been dropped from its service, the reason for the drop (i.e. expired contract, clerical error, system limitation, non-payment, etc.) and the date of departure. By comparing data on both reports on a sample basis and requesting follow-up documentation from retail suppliers as necessary, the Department could perform an efficient, post-transaction review. The same process could be deployed for other exceptions that are proposed by RESA in Section II.B. below. RESA members would be pleased to assist the Department in ironing out the specific details of the review and reporting processes in a working group process or technical sessions.

B. The Department Should Clarify that the Rationales of the Order Support Exceptions to the Six-Month Same-Supplier Prohibition Beyond the End of a Contract Term.

The Department set forth a two-fold rationale for endorsing the expired contract exception. First, a customer's temporary return to default service at the end of a contract while it evaluates its competitive options does not implicate the multiple switching practices that the Department is seeking to eradicate; second, such moves are consistent with the purpose of default service – that is, to serve as short-term, last resort supply option.[32] These rationales would apply with equal force to other common sense exceptions to the same-supplier prohibition and should be made express in a revised Order.

1. Inadvertent Returns to Default Service Due to Clerical Error, Miscommunication and System Limitations

Neither retail suppliers nor NSTAR is infallible. Customers are inadvertently dropped from competitive supply accounts to default service on the utilities' systems due to clerical error or miscommunication or due to limitations in the utilities' billing systems. These types of errors or system drops appear to occur most frequently when a customer attempts to change its name, business address or billing address on NSTAR's systems. Customer meter changes also can be problematic. When these transactions are processed, NSTAR will sometimes close the customer's retail supplier account on its system, temporarily place the customer on default service, and re-enroll the customer with the retail supplier, using the updated information. Although the resulting stay on default service may be very short, these numerous inadvertent or system drops will fall within the purview of the new tariffs, thereby prohibiting customers from deriving the benefits of their retail supply contracts. Certainly the Department did not mean to encompass these types of erroneous or

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32 Order at 17-18.

inadvertent returns to default service within the six-month stay restriction. RESA therefore requests that the Department clarify its order to explicitly state that temporary moves to default service that are caused by clerical errors, miscommunication and system limitations also are exempt from the six-month prohibition embodied in the new tariffs. Any other approach would be grossly unfair to the customers.

2. Returns to Default Service Due to Nonpayment

Another exception is warranted for customers that are required to return to default service due to nonpayment of their retail supplier bill and thereafter wish to reinstate their competitive supply contract when they have sufficient funds to pay the balance due.[33] Such an exception, like that for clerical errors, miscommunications and system limitations, would not implicate the multiple switching practices that the Department finds problematic, nor would it be inconsistent with the purpose of default service.

C. The Department Should Clarify the Scope of the Tariffs

The last sentence of the tariff reads: "Customers are permitted to switch from Default Service to a different Competitive Supplier who has not supplied the Customer with Generation Service in the same six (6) month period."[34] This sentence, combined with the procedures adopted by NSTAR,[35] strongly suggests that the tariffs are overbroad in scope. They do not target only the last retail supplier who supposedly "park[ed]" the customer on default service to take advantage of price differentials.[36] They seem to apply with equal

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33 Although it is possible that this situation already could fall under the expired contract exception, the Order is ambiguous on that point. RESA therefore seeks clarification with regard to this exception as well.

34 See NSTAR Tariff Filings, Jan. 20, 2006.

35 See NSTAR Tariff Filings, Cover Letter, Jan. 20, 2006, at 3.

36 Pre-Filed Testimony of Daly at 6.

force to any retail supplier that served the customer during the six-month period preceding the stay, even if the customer did not switch to default service upon the cessation of its relationship with that supplier. Although these former suppliers may very well fall within the expired contract exception, it is both unnecessary and inappropriate to burden them with proving that fact in light of the purpose of the Order. RESA therefore requests that the Department clarify that the tariffs apply only to the last competitive supplier that served the customer prior to its return to default service.

D. The Department Should Suspend Implementation of the Tariffs Pending Resolution of the Operational Details

RESA and other participants in this proceeding did not have an opportunity to comment on the exception process because that concept did not emerge until NSTAR submitted its Reply Comments and was adopted in the final Order.[37] For the same reasons, no participants have been able to provide input with respect to the process by which compliance reviews, if any, will be performed. RESA recognizes that the adoption of the recommendations contained herein will require further refinement. Consequently, RESA requests that the Department suspend the Order and conduct technical sessions or other proceedings that will facilitate resolution of the operational details and prevent the new tariffs from wreaking havoc on customers, retail suppliers and the market at large. Upon the filing of new tariffs, RESA urges the Department to allow at least one month for competitive suppliers and customers to prepare for implementation of the new rules before they become operative. [38]

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[37] See Reply Comments of NSTAR at 16; Order at 17-18.

[38] G.L. c. 164, § 94 recognizes that parties should be afforded ample time to prepare for changes in terms and conditions. To that end, the statute provides that tariffs "shall not become effective until the first day of the month next after the expiration of fourteen days from the filing thereof." Thus, under the

Conclusion

For the reasons discussed above, the Department should grant RESA's motion for reconsideration and reverse the Order in its entirety. Alternatively, the Department should reconsider and rescind the language in the Order that empowers NSTAR to act as compliance monitor. The Department also should clarify that (1) returns to default service due to clerical error, miscommunication, systems limitations and nonpayment also are exempt from the same-supplier prohibition imposed by the new tariffs, and (2) the prohibition applies only to the last competitive supplier that served the customer prior to its return to default service. Finally, the Department should open an hourly pricing docket at the earliest possible date.

Respectfully Submitted,

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current statutory scheme, parties generally have between three and six weeks notice to prepare for changes resulting from new tariffs.